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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:
Janne Mae Howards Koritzinsky et al.

Serial No.: 09/476,708

Filed: December 30, 1999

For: IMAGING SYSTEM PROTOCOL
HANDLING METHOD AND
APPARATUS

§ Group Art Unit: 3625
§ Examiner: Rosen, Nicholas D.
§ Atty. Docket: GEMS:0036-1/YOD
§ 15-SV-5482
§

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December 22, 2003	Date
<i>Helen Tinsley</i> Helen Tinsley	

REPLY BRIEF PURSUANT TO 37 C.F.R. §1.193

This Reply Brief is being filed in response to the Examiner's Answer mailed on October 21, 2003.

Appellants file this Reply Brief to address certain statements made by the Examiner in the Examiner's Answer. First, Appellants will address the Examiner's remarks regarding the claims. Secondly, Appellants will address certain statements made by the Examiner in regard to the rejections formulated in the Response to Argument.

First, Appellants note that the Examiner's change to the claims is correct. As indicated by the Examiner, claim 67 recites:

67. The method of claim 59, wherein the protocol includes data for filming, viewing, reconstructing or processing images reconstructed from the image data.

Accordingly, upon entry of this claim, the claims in the Appeal Brief are correct.

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Secondly, Appellants traverse certain statements made by the Examiner in regard to the rejections, which are formulated in the Response to Argument. Specifically, Appellants disagree with the Examiner's presumption that the Wood reference relates to the *user viewable indicia descriptive of the protocol*. In addition, Appellants disagree with the Examiner's assertion that the Reeder reference is reasonably pertinent to the particular problem with which Appellants are concerned.

Prior to discussing these two issues, as a preliminary matter, it should be noted that independent claim 59 recites, *inter alia*, "displaying user viewable indicia descriptive of the protocol at a medical diagnostic location, wherein the user viewable indicia include an exemplary image obtainable via the protocol." This feature is also recited in similar forms in independent claims 69 and 74. Indeed, the present application describes a technique for making protocols available to a system user for easily selecting the protocols and installing them into a diagnostic system. *See Application*, page 1, lines 8-11. Specifically, a series of interactive user viewable pages may be implemented to assist the user in selecting a protocol. *See Application*, page 19, line 23 – page 20, line 2. For each protocol provided in the listing, a condensed image or thumbnail sketch 242 of the image available through the application of the protocol is shown on a protocol screen 236. *See Application*, page 25, lines 16-22. Therefore, the user may upload protocols by selecting the thumbnail image or text associated with a particular protocol.

With regard to the Examiner's presumption, Appellants note that the Examiner stated: "Wood does disclose exemplary images obtainable via the diagnostic system, and *presumably* via the protocol." (Emphasis added) The Examiner further asserted that it is not arbitrary to presume that Wood discloses this feature and that the issue is using the protocol options to locate the appropriate reference images. Appellants respectfully traverse this assertion and the unsupported presumption made by the Examiner.

In the Response to Argument, the Examiner asserted that the Wood reference describes obtaining an exemplary image through the protocol because the Wood

reference discloses that “picking an exam category branches the operator to more detailed hierarchies of the exams, pathologies, and conditions.” *See* Wood et al., col. 10, lines 8-10. From this passage, the Examiner appears to assert that exams in the Wood reference are equivalent to “protocols” in the recited claims. However, the Wood reference describes exam categories as obstetrical, abdominal, cardiology, etc. *See* Wood, col. 10, lines 5-7. The reference is devoid of any suggestion of accessing the exemplary images based on the protocols, but accesses the images based on patient conditions. In fact, the Wood reference clearly describes that the images are used to assist in diagnosing pathology conditions. *See* Wood et al., col. 2, lines 30-49, col. 10, lines 19-22. In this manner, the Wood reference describes searching specific pathology or conditions to find specific images. *See* Wood et al., col. 10, lines 11-15. Clearly, the Wood reference describes using actual images for the purposes of diagnostic treatment, not for displaying user viewable indicia *descriptive of the protocol*, which includes an *exemplary image obtainable via the protocol*. Thus, the Examiner’s presumption is not supported by the Wood reference.

Furthermore, in the Response to Argument, the Examiner also asserted that Reeder is reasonably pertinent to the particular problem to which Appellants are concerned, which is charging users for downloading files and other usage of a computer network. However, Appellants specifically describe that current protocol distribution and upgrade systems fail to include sufficient information on how to execute or implement the protocol. *See* Application, page 3, lines 1-5. In addition, the current protocol distribution system may require distribution of protocols by personnel of a service provider. *See* Application, page 3, lines 5-15. Accordingly, the present technique provides a novel approach to handling imaging and diagnostic system protocols assigned to respond to those needs. *See* Application, page 3, line 29-page 4, line 9.

The simple desire to be paid for products does not satisfy the second prong of the *Union Carbide* test. *Union Carbide Corp. v. American Can Co.*, 724 F.2d 1567, 220 U.S.P.Q. 584 (Fed. Cir. 1984). In *Union Carbide*, the test requires that appropriate art, if

not in the same field of endeavor, must still be *reasonably* pertinent to the particular problem with which the inventor was involved. Thus, the mere fact that the Examiner provides a possible link between the two references is not sufficient to support a contention that the two references are reasonably pertinent to one other. Indeed, Appellants respectfully assert that a "wish to be paid for products," as stated by the Examiner, is not sufficiently related to problems with respect to medical systems or access to imaging protocols as recited in the instant claims. Although many may have a desire to be paid, that is not reason as to why a skilled artisan would look to an online billing system for exchanging international currency for credit card transactions when designing a medical imaging protocol distribution system. As such, the Reeder reference is clearly non-analogous art.

In conclusion, it is believed that all pending claims under appeal are fully patentable for all of the reasons summarized above. Appellants renew their request for a favorable decision of the Board.

Respectfully submitted,

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